# Muthukamaru @ Muthukumaru a/l Veeriah (as the executor of the estate of Veeriah a/l Savu) v Pemungut Duti Harta Pusaka

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-01-94 OF 1998

MOHD NOOR AHMAD, RICHARD MALANJUM AND MOHD GHAZALI JJCA

3 SEPTEMBER 2003

***Equity*** *— Estoppel — Issue estoppel — Whether applicable against person imposed with statutory duty*

***Revenue Law*** *— Estate duty — Release from estate duty — Whether exempt — Whether estate belonged to deceased — Estate Duty Enactment 1941 s 43*

One Veeriah a/l Savu (now deceased) had, prior to his death, entered into an agreement with a company ('the company') wherein the deceased agreed to allow the company to develop the land into a low-cost housing estate. After the death of the deceased, the appellant and one Chellamal a/p Meenachi were granted letters of administration to administer the estate of the deceased. On 11 May 1992, the appellant and several other beneficiaries (as plaintiffs) obtained the following orders against the company (as defendants), namely: (a) a declaration that the plaintiffs were the lawful and beneficial owners of the property; and (b) a order that the memorial in the registered document of titles and the extract of the document of titles for the said properties be amended to replace the company with the plaintiffs as registered owners. The appellant subsequently files with the respondent a corrective estate duty affidavit pursuant to s 42(1) of the Estate Duty Enactment of 1941 listing the said properties to be transferred to the appellant and other beneficiaries. In that affidavit, the appellant stated that the said properties were in fact properties held on trust by the deceased and for his children and that the said properties were exempt from estate duty as the same belong to the appellant and other beneficiaries and not the deceased. The respondent however required the appellant to pay within 30 days the sum of RM616,962.52 being estate duty in respect of the said properties. The appellant appealed claiming that duty imposed was excessive.

**Held**, dismissing appeal with costs:

(1) Section 3(iv) of the Enactment provides no property passing on the death of the deceased shall be deemed to be held by the deceased in trust for another person unless (a) the trust is substantiated by an instrument properly executed; (b) and where

necessary stamped containing a description of the trust property and evidencing the nature of the trust relating to the same; (c) and in addition in the case of immovable property ... by a memorial on the register document of title of the name or names of the person or persons holding the property in trust followed by words showing that the property is held in trust (see p 281A–D).

(2) The appellant had failed to show the required evidence to exempt him from the imposition of estate duty (see p 281D–E).

(3) The respondent pointed out they were not aware of the proceedings and were only made aware after the said court order was obtained and submitted to them by the appellant (see p 282F–G).

(4) In any event, the court order came about as a result of an action between the appellant and the other beneficiaries and the company. The respondent is a person on which there is imposed a statutory duty to carry out certain acts as provided in the Enactment. The respondent cannot be estopped from performing its duty. There was no evidence to support the claim of the appellant that the said properties were held on trust and that being the situation, the respondent had to impose estate duty. To admit estoppel against the respondent would have the effect of nullifying the provisions of the Enactment (see p 282H–I); *Public Textiles Berhad v Lembaga Letrik Negara* [1976] 2 MLJ 58 followed.

**[Bahasa Malaysia summary**

Veeriah a/l Savu (si mati) telah, prior to his death, entered into an agreement with a company ('the company') wherein the deceased agreed to allow the company to develop the land into a low-cost housing estate. After the death of the deceased, the appellant and one Chellamal a/p Meenachi were granted letters of administration to administer the estate of the deceased. On 11 May 1992, the appellant and several other beneficiaries (as plaintiffs) obtained the following orders against the company (as defendants), namely: (a) a declaration that the plaintiffs were the lawful and beneficial owners of the property; and (b) a order that the memorial in the registered document of titles and the extract of the document of titles for the said properties be amended to replace the company with the plaintiffs as registered owners. The appellant subsequently files with the respondent a corrective estate duty affidavit pursuant to s 42(1) of the Estate Duty Enactment of 1941 listing the said properties to be transferred to the appellant and other beneficiaries. In that affidavit, the appellant stated that the said properties were in fact properties held on trust by the deceased and for his children and that the said properties were exempt from estate duty as the same belong to the appellant and other beneficiaries and not the deceased. The respondent however required the appellant to pay within 30 days the sum of RM616,962.52 being estate duty in respect of the said

properties. The appellant appealed claiming that duty imposed was excessive.

**Diputuskan**, menolak rayuan dengan kos:

(1) Seksyen 3(iv) Enakmen tersebut memperuntukkan tiada hartanah dengan kematian si mati dianggap akan dipegang oleh si mati atas amanah untuk seorang yang lain kecuali: (a) amanah tersebut disokong oleh satu suratcara yang telah dilaksanakan dengan betul; (b) dan di mana perlu dicopkan yang mengandungi satu deskripsi hartanah atas amanah dan memberi keterangan sifat amanah berkaitan yang sama; (c) dan sebagai tambahan dalam kes harta tak alih ... melalui satu memorial atas daftar dokumen hakmilik nama-nama orang yang memegang hartanah atas amanah diikuti perkataan-perkataan yang menunjukkan bahawa hartanah dipegang atas amanah (lihat ms 281A–D).

(2) Perayu telah gagal untuk menunjukkan keterangan yang dikehendaki untuk mengecualikan diri beliau dari dikenakan duti harta pusaka (lihat ms 281D–E).

(3) Responden telah menegaskan bahawa mereka tidak sedar terdapat prosiding tersebut dan hanya dimaklumkan setelah perintah mahkamah diperolehi dan dikemukakan kepada mereka oleh perayu.

(4) Dalam apa keadaan, perintah mahkamah timbul akibat dariapda satu tindakan antara perayu dan benefisiari-benefisiari lain dan syarikat tersebut. Responden adalah seseorang yang telah dikenakan satu kewajipan statutori untuk melaksanakan tindakan-tindakan tertentu sebagaimana yang diperuntukkan dalam Enakmen tersebut. Responden tidak boleh diestopkan dari melaksanakan. Tiada keterangan untuk menyokong tuntutan perayu bahawa hartanah-hartanah tersebut dipegang atas amanah dan sekiranya demikian halnya, responden perlu mengenakan duti hartanah. Untuk mengakui terdapat estopel terhadap responden akan mengakibatkan pembatalan peruntukan-peruntukan Enakmen tersebut (lihat ms 282H–I); *Public Textiles Berhad v Lembaga Letrik Negara* [1976] 2 MLJ 58 diikut.]

**Notes**

For cases on the issuance of estoppel, see 6 *Mallal's Digest* (4th Ed, 2002 Reissue) para 2447.

For cases on release from estate duty, see 10 *Mallal's Digest* (4th Ed, 2002 Reissue) para 1997.

**Cases referred to**

*Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 KB 64 (refd)
*Federated Malay States v Harnam Kaur, The* [1933] MLJ 267 (refd)
*Public Textiles Berhad v Lembaga Letrik Negara* [1976] 2 MLJ 58 (folld)

**Legislation referred to**

Estate Duty Enactment 1941 ss 3(iv), 4(i), 5(i), 42(i), 43(i)
Estate Duty Enactment No 10 of 1929 s 6

**Appeal from**: Originating Motion No R1–25–117 of 1994 (High Court, Kuala Lumpur)

*F Bodipalar* (*Bodipalar Ponnudurai Nathan*) for the appellant.

*Ahmad Khairuddin Abdullah* (Legal Officer, Inland Revenue Board) for the respondent.

**Mohd Ghazali JCA** (delivering judgment of the court): This is an appeal against the decision of the learned High Court judge given on 25 August 1998 dismissing the appellant's application by way of notice of motion made pursuant to s 43(i) of the Estate Duty Enactment 1941 ('the Enactment') wherein the appellant prayed for, inter alia, the following reliefs:

(a) that there is no estate duty payable from the estate of one Veeriah a/l Savu ('the deceased') to the respondent with respect to certain properties all in the Mukim of Kuantan;

(b) alternatively, that the assessment of estate duty payable by the estate of the deceased dated 3 October 1994 is excessive and should be revised.

The background to the application is as follows:

(1) On 19 June 1971, the said Veeriah a/l Savu, now deceased, as owner of a piece of land held under Certificate of Title 2999 for Lot No 928 in the Mukim of Kuala Kuantan measuring 16 acres, 0 rood and 29 poles ('the said land'), entered into an agreement ('the agreement') with a company named Sharikat Lee Engineering Sdn Bhd ('the company') wherein the deceased agreed to allow the company to develop the said land into a low-cost housing estate. It was agreed therein that the company will erect for the deceased free from all charges and costs the following:

(i) 18 low-cost single-storey terrace buildings;

(ii) 5 low-cost single-storey semi-detached buildings; and

(iii) 4 low-cost single-storey detached buildings,

and transfer the titles to the deceased in consideration of the deceased permitting the company to develop the said land.

(2) It was also agreed therein, inter alia, that:

(a) the deceased shall immediately upon the execution of the agreement execute a valid and registrable memorandum of transfer of the said land in favour of the company free from all encumbrances;

(b) the company shall as soon as possible at its own cost and expense apply for and obtain sub-divisional approval and conversion of the said land into a building or housing estate;

(c) the company undertook to obtain separate qualified titles to the said land of the said 27 buildings and on the issue of the same transfer the same to the deceased or his nominee or nominees.

(3) The deceased died on 11 April 1983.

(4) On 27 September 1990, the appellant and one Chellamal a/p Meenachi Pillai were granted letters of administration to administer the estate of the deceased.

(5) On 11 May 1992, vide OS No S4–24–1277 of 1991 in the High Court of Malaya at Kuala Lumpur, the appellant and seven other beneficiaries as plaintiffs — the company was named as the defendant — obtained the following orders:

(i) a declaration that the plaintiffs are the lawful and beneficial owners of 17 lots ('the said properties') as identified in the application and held under separate titles; and

(ii) an order that the memorial in the registered document of titles and the extract of the document of titles for the said properties be amended to replace the company with the plaintiffs as registered owners ('the said court order').

(6) On 16 June 1994, the appellant filed with the respondent a corrective estate duty affidavit pursuant to s 42(i) of the Enactment listing the said properties to be transferred to the appellant and the other beneficiaries. In that affidavit, the appellant stated that the said properties 'are in fact properties held on trust by the deceased and for his children'. The appellant contended that the said properties were exempt from estate duty as the same belong to the appellant and the other beneficiaries and not the deceased. Paragraphs 6 and 7 of the affidavit, in relation to this contention, read:

> 5 I am advised and verily believe that the said properties are exempt from estate duty by reason of the fact that it was the plaintiffs in the civil action who were the true legal and beneficial owners of the said properties and not the deceased as stated in the order dated 11 May 1992.

> 6 Further I state that the plaintiffs in the civil action have a claim against the estate for the said properties which are to be transferred to them or for the value of those properties. It is for this reason that I have listed the value of the properties as a debt owing by the deceased.

(7) By notice of assessment dated 3 October 1994, the respondent required the appellant to pay within 30 days the sum of RM616,962.52 being estate duty in respect of the said properties.

(8) The appellant being aggrieved with the decision of the respondent filed an application to the High Court by way of notice of motion pursuant to s 43 of the Enactment on two grounds, viz:

(i) there is no estate duty involved, the said properties being trust properties; and

(ii) alternatively, the duty imposed is excessive.

As discussed earlier, the learned High Court judge dismissed the application. The appellant appealed to this court. At the outset of the hearing of this appeal, the appellant's counsel informed the court that she will only pursue the appeal on the first ground and is abandoning the second ground.

Section 43(i) of the Enactment reads:

> Any accountable person aggrieved by the decision of the Collector with respect to the amount of estate duty payable on an estate duty affidavit or on an estate duty account or with respect to the repayment of any excess duty paid or by claim for additional duty by the Collector, and whether he is aggrieved on the ground of the value of any property or the rate charged or otherwise, may, on payment of or giving security as hereinafter mentioned for the duty claimed by the Collector or such portion of it as is then payable by him, apply to the High Court within the time and in the manner and on the conditions directed by rules of court and the amount of duty shall be determined by the Court and if the duty is less than that paid to the Collector the excess shall be repaid.

Before the learned High Court judge, the appellant contended that the respondent was aware of the said court order but did not intervene in the proceedings instituted by the plaintiffs or take action to set aside the said court order after it was obtained. It was also contended that pursuant to the said court order, the claim by the plaintiffs is a liability on the estate which the respondent ought to have taken into consideration in assessing any estate duty due from the estate.

In opposition, the respondent contended that the said properties was the consideration provided by the agreement between the company and the deceased. The respondent insisted that the applicant's purported claim that the said properties were held on trust by the deceased is not sustainable in the light of s 3(iv) of the Enactment. Section 3 of the Enactment, entitled 'Presumptions' reads:

A For the purpose of this Enactment —

(iv) No property passing on the death of the deceased shall be deemed to be held by the deceased in trust for another person unless the trust is substantiated by an instrument properly executed and where necessary stamped containing a description of the trust property and evidencing the B nature of the trust relating to the same and in addition in the case of immovable property (which for the purpose includes charge on immovable property) by a memorial on the register document of title of the name or names of the person or persons holding the property in trust followed by words showing that the property is held in trust.

C The respondent then pointed out the following:

(i) the appellant had failed to produce to the respondent any instrument to substantiate that the said properties are trust properties held by the deceased as trustee;

D (ii) the agreement with the company identified the deceased as the owner of the said land held under Certificate of Title 2999 for Lot No 928 in the Mukim of Kuala Kuantan;

(iii) clause (c) of the agreement states that the owner (the deceased) had allowed the company to develop the said land and clause 3(i) states that upon the execution of the agreement, the deceased is required E to transfer the same to the company for the purpose of the development;

(iv) clause (d) states what the consideration is from the company to the deceased and it is this consideration that the High Court vide OS No S4–24–1277 of 1991 ordered them to be transferred to the F plaintiffs.

It is the contention of the respondent that the action of the plaintiffs, ie the appellant and the other beneficiaries in OS No S4–24–1277 of 1991 was to have the properties transferred to them pursuant to the agreement between the deceased and the company. Hence, the said court order does not in any G way affect the fact that the said properties belong to the deceased at the time of his death. This fact was even admitted by the plaintiffs as can be seen in para 5 of the affidavit of the applicant and the said Chellamal a/p Meenachi Pillai, dated 4 October 1991, filed in support of the originating summons.

In reply to the allegation of non-intervention or to have the said court H order set aside by the respondent, it is contended that the respondent was not aware of the proceedings leading to the said court order until after the order was obtained by the plaintiffs. It was also contended that since there is no evidence of trust in accordance with s 3(iv) of the Enactment, the said properties cannot be construed as trust properties but properties belonging to the deceased.

I The learned High Court judge was of the view that it is beyond dispute that up to the time the agreement was entered into, the ownership of the said land which was then undivided was in the deceased. He then said:

> In pursuance of the said agreement when the requisite conditions are fulfilled the Syarikat was obliged to have the property after the subdivision and the erection of houses on them transferred to the deceased or nominee or nominees. Now that at the time the said summons the deceased had died, the transfer was ordered by the court to be made by the Syarikat to the plaintiffs which if the deceased was then alive, the proper plaintiff would have been the deceased himself being the owner of the said properties. As to the statutory declaration, it was made by the applicant as the administrator of the estate of the deceased. He deposed that the said divided properties were held on trust by the deceased for his children. Apart from the deposition, there was no other evidence to support the said deposition. Therefore, on the strength of the statutory declaration the properties cannot be held to be trust properties for the purpose of the 1941 Enactment. ... The said section 3(iv) of the 1941 Enactment restricts the evidence by which the fact of trusteeship may be established for the purpose of the 1941 Enactment, so that unless the trust is substantiated by an instrument properly executed and where necessary stamped containing a description of the trust property and evidencing the nature of the trust relating to the same, and further that, if the property is immovable, such as land in this case, it is to be substantiated by a memorial on the register document of title of the name of the person holding the property in trust following by words showing that the property is held in trust, the property is not trust property. There was no such evidence in this case. Thus, unless this is shown, the registered holder is treated as the true owner for the purpose of the 1941 Enactment: see *The Federated Malay States v Harnam Kaur* [1933] MLJ 267.

We are of the view that the learned High Court judge was correct in arriving at the decision that he did, namely, that the deceased was not holding the said properties on trust for the appellant and the other beneficiaries based on the evidence before him. Section 4(i) of the Enactment, entitled 'Estate duty is leviable on property which passes on death', provides estate duty is imposed on properties which passes on the death of the deceased. Section 4(i) reads:

> In the case of every person dying after the commencement of this Enactment, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value, ascertained as hereinafter provided, of all property settled or not settled which passes on the death of such person a duty called 'estate duty' at the graduated rates set forth in the First Schedule to this Enactment.

Section 5 of the Enactment, entitled 'Property which is deemed to pass on death', provides, inter alia, property passing on the death of the deceased shall be deemed to include the following property, '... (i) property of which the deceased was at the time of his death competent to dispose.' Under the agreement, the deceased allowed the company to develop the land. Upon the execution of the agreement, the deceased transferred the said land to the company as agreed. The consideration which would be received by the deceased are the said properties. It was also agreed that the company will

A deliver vacant possession of the said properties upon completion. The evidence adduced showed that the said properties are the properties of the deceased and would fall within the contemplation of ss 4(i) and 5(i) of the Enactment. There was no evidence to support the claim of the appellant that the said properties were held on trust. As discussed earlier, s 3(iv) of the Enactment provides no property passing on the death of the deceased B shall be deemed to be held by the deceased in trust for another person unless:

(a) the trust is substantiated by an instrument properly executed;

C (b) and where necessary stamped containing a description of the trust property and evidencing the nature of the trust relating to the same;

(c) and in addition in the case of immovable property ... by a memorial on the register document of title of the name or names of the person or persons holding the property in trust followed by words showing that D the property is held in trust.

Section 3(iv) of the Enactment restricts the evidence by which the fact of trusteeship may be established for the purpose of the Enactment. The appellant had failed to show the required evidence as stated above to exempt him from the imposition of estate duty. Paragraph 5 of the affidavit E of the applicant and the said Chellamal a/p Meenachi Pillai, referred to earlier, filed in support of the OS No S4–24–1277 of 1991 which led to the granting of the said court order, reads:

> Berikutan pertemuan tersebut dan kira-kira sebulan selepas si mati meninggal dunia, kami, plaintif-plaintif pertama dan ke-2 yang dinamakan F di atas telah menghadiri satu pertemuan dengan Lee Tian Hee (si mati) iaitu Pengarah Urusan Defendan semasa itu. Lee Tian Hee tersebut juga mengesahkan bahawa si mati telah mengisytiharkan kepada Lee Tian Hee tersebut bahawa plaintif-plaintif secara bersama adalah pemunya benefisial bagi harta tersebut yang sepatutnya dikembalikan kepada si mati menurut G perjanjian usahasama yang telah dibuat di antara si mati dengan defendan. Di hadapan kami, Lee Tian Hoe tersebut telah menelefon HY Lee dan mengarahkannya supaya meneruskan dengan pindahmilik harta tersebut kepada plaintif-plaintif sebagai pemunya benefisial bagi harta itu. HY Lee bersetuju untuk berbuat begitu.

H From our reading, the above statement is not all evidence which would fall within the contemplation of s 3(iv) of the Enactment to show the existence of a trust. In fact, that statement shows that the appellant and the other beneficiaries accept the fact that the said properties belong to the deceased. That being the situation, the said properties are deemed to still belong to the deceased for the purpose of the Enactment. In *The Federated* I *Malay States v Harnam Kaur* [1933] MLJ 267, which dealt with s 6 of the Estate Duty Enactment No 10 of 1929 which is almost in pari materia with s 3(iv) of the Enactment, Thorne AG CJ said at p 268:

Section 6 exclude property held by the deceased as a trustee for another person, provided that the facts fall within the purview of that section. But the second proviso to the section enacts that:

> 'For the purpose of this Enactment no property passing on the death of the deceased shall be deemed to be held by the deceased in trust for another person under any disposition unless the trust is evidenced in the case of immoveable property by registration as trustee and by the deposit of the instrument declaring or containing the trust in the office of the Registrar of Titles or Collector of Land Revenue.'

This section restricts the evidence by which the fact of trusteeship may be established for the purposes of the Enactment, so that unless a registered holder is so registered as trustee, and the instrument which evidences the trust be deposited in terms of that section, the registered holder is treated as the true owner for the purpose of the Enactment.

If one is claiming exemption under a statute, one must fall clearly within the words of the statute. In *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 KB 64, Rowlatt J said (at p 71):

> ... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

We also find no merit in the contention raised by the appellant, viz, that the respondent, although being aware of the proceedings vide OS No S4–24–1277 of 1991 which eventually led to the granting of the said court order, failed to intervene and also failed to take action to set aside the court order after it was obtained. In reply to this, the respondent pointed out they were not aware of the proceedings and were only made aware after the said court order was obtained and submitted to their goodselves by the appellant. We have not been enlightened as to why this contention was raised by the appellant except that in her written submission for the purpose of this appeal, the appellant's counsel stated that the learned High Court judge failed to take into account the said court order under OS No S4–24–1277 of 1991 that remains to this date unchallenged by the respondent. From our reading of her submission, it would seem that the appellant is contending that the respondent is now estopped from imposing estate duty as a result of the said court order. With due respect to counsel, the said court order came about as a result of an action between the appellant and the other beneficiaries and the company. The respondent is a person on which there is imposed a statutory duty to carry out certain acts as provided in the Enactment. The respondent cannot be estopped from performing its duty. There was no evidence to support the claim of the appellant that the said properties were held on trust and that being the situation, the respondent had to impose estate duty. To admit estoppel against the respondent would have the effect of nullifying the provisions of the Enactment (see *Public Textiles Berhad v Lembaga Letrik Negara* [1976] 2 MLJ 58).

A For the reasons abovestated, we dismissed this appeal with costs.

*Appeal dismissed with costs.*

Reported by Mariette Peters Goh

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